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July 28, 2016

Regional Freedom of Information Act Officer
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Re.: Freedom of Information Act Request

Dear Sir or Madam:

I am writing on behalf of the Independent Petroleum Association of America ("IPAA") in light of the U.S. Environmental Protection Agency's ("EPA") June 6, 2016 request for clarification regarding IPAA's May 25, 2016 Freedom of Information Act ("FOIA") request to EPA Region 8. EPA requested that IPAA clarify its May 25 request so as to provide more specification as to the records it is seeking. Although IPAA contends that its FOIA request as originally drafted provided sufficient specificity for EPA to identify and locate responsive records,¹ IPAA submits this revised FOIA request in response to EPA's concerns.

Pursuant to FOIA, 5 U.S.C. § 552, EPA FOIA implementing regulations, 40 C.F.R. Part 2, and any other applicable federal statutes, rules and regulations, IPAA requests the following records from EPA Region 8 to the extent the requested records are not currently publicly available:

1. All communications (including emails, letters or other correspondence, and any attachments thereto) and any other records shared between or among any current or former personnel of the EPA Region 8 Office of Ecosystem Protection, EPA Region 8 Office of Regional Counsel, or the EPA Region 8 Underground Injection Control Program, with responsibilities related to the investigation of groundwater quality in Pavillion Field, Wyoming, including those individuals listed in Attachment A, and any of the following individuals or

¹ A FOIA request need only "reasonably describe" the documents in question. 5 U.S.C. §§ 552(a)(3)(A). A description is sufficient "if it enable[s] a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort." *National Sec. Counselors v. C.I.A.*, 898 F. Supp. 2d 233, 276-77 (D.C. Cir. 2012) (quoting H.R. Rep. No. 93-876, at 5-6, 1974 U.S.C.C.A.N. 6267, 6271). The specificity requirement "is not to be used as method of withholding records." *Bristol-Myers Co. v. F.T.C.*, 424 F.2d 935, 938 (D.C. Cir. 1970) (internal citation omitted); *see also*, S. Rep. No. 93-854, at 10 (1974) ("[T]he identification standard in the FOIA should not be used to obstruct public access to agency records" the statute "makes explicit the liberal standard for identification that Congress intended."). Moreover, the statute contains no requirement that the requester furnish email addresses or other specialized search terms for the agency, or that the documents requested even be locatable using electronic searches. On the contrary, an agency "may not hide behind the limitations of its own records systems in refusing to process FOIA requests." *Nat'l Sec. Counselors*, 898 F. Supp. 2d at 276-77.

organizations, between January 2012 and the present, related to the data, analysis, conclusions or publication of any of the documents listed in Attachment B:

- (a) Joe or Hope Dennis; John or Katherine Fenton; Marvin or Evelyn Griffin; Jeff or Rhonda Locker; Louis or Donna Meeks, Zoe Ann Randall;
 - (b) The Vincent Law Office in Riverton, Wyoming or the Metier Law Firm, LLC in Fort Collins, Colorado;
 - (c) Weston Engineering, Inc. in Wyoming;
 - (d) Dominic C. DiGiulio;
 - (e) Robert B. Jackson;
 - (f) Anthony Ingraffea;
 - (g) Jennifer McIntosh;
 - (h) Stephen Osborn;
 - (i) Avner Vengosh;
 - (j) Powder River Basin Resource Council;
 - (k) Natural Resources Defense Council; or
 - (l) the U.S. Geological Survey.
2. All internal communications (including emails, letters, or other correspondence, and any attachments thereto) and any other records shared internally between or among any current or former personnel of the EPA Region 8 Office of Ecosystem Protection, EPA Region 8 Office of Regional Counsel, or EPA Region 8 Underground Injection Control Program, with responsibilities related to the investigation of groundwater quality in Pavillion Field, Wyoming, including the individuals listed in Attachment A, between January 2012, and the present, related to the data, analysis, conclusions or publication of any of the documents listed in Attachment B.
3. All communications (including emails, letters or other correspondence, and any attachments thereto) and any other records shared between or among any current or former personnel of the EPA Region 8 Office of Ecosystem Protection, EPA Region 8 Office of Regional Counsel, or EPA Region 8 Underground Injection Control Program, with responsibilities related to the investigation of groundwater quality in Pavillion Field, Wyoming, including the individuals listed in Attachment A, and the Wyoming Department of Environmental Quality between July 2013 and the present, related to the data, analysis, conclusions or publication of DEQ's 2015 Draft Report, as more specifically described in Attachment B.

IPAA files this FOIA request as a non-profit organization and requests a waiver of fees under 5 U.S.C. Section 552(a)(4)(A)(iii). In reference to this request, IPAA provides the following information addressing the points listed in the Department of Justice's FOIA Guide, 2002 Edition: Fees and Fee Waivers:

- IPAA represents thousands of independent oil and natural gas producers and service companies across the United States. IPAA's primary mission is to ensure "a strong, viable domestic oil and natural gas industry, recognizing that an adequate and secure supply of energy is essential to the national economy." See www.ipaa.org/about. It

accomplishes this primarily through education and outreach to the public, including funding and carrying out significant educational programs for the general public and the petroleum industry. These efforts are focused on national energy policy and the other key issues which affect both the public at large, as well as independent petroleum producers, including tax policy, environmental regulation, capital markets and other issues.

- IPAA has a proven track record of publicly disseminating information. Any information provided in response to our request will be used to ensure transparency and will be made readily available to the public. Specifically, IPAA will utilize the resources of its dedicated public outreach and education organization, Energy in Depth, which is focused precisely on providing facts to the public regarding the development of America's onshore energy resources. See <http://energyindepth.org/about/>. Energy in Depth regularly publishes articles, and provides facts sheets, videos and other content, and has repeatedly provided information and analysis of activities and developments related to the Pavillion Field and EPA's and Wyoming's Pavillion Field Investigations. IPAA also disseminates information through regular press releases, the publication of reports and analyses, in weekly news releases and through its website. IPAA will utilize these methods to publicly disseminate the documents provided in response to this request.
- The content of the documents requested "is likely to contribute" to public understanding of the operations and activities of EPA in Pavillion Field, and it will help IPAA properly inform the public regarding issues related to Pavillion Field. There has been intense, sustained interest across a broad spectrum of the public in the Pavillion Field investigation and EPA's ongoing role. The Pavillion Field investigation and hydraulic fracturing generally, continue to receive wide-ranging coverage in the media, including in local publications like the *Casper Star Tribune*, and in national news outlets like CBS News, the *New York Times* and the *Wall Street Journal*.
- The public also remains intensely interested in hydraulic fracturing more generally, as illustrated by Congress' 2010 request that EPA undertake a broader investigation of hydraulic fracturing, EPA's June 4, 2015 draft report in response, (*Assessment of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources (External Review Draft)*), the subsequent review of the draft report by EPA's Science Advisory Board, and related public proceedings.
- The disclosures requested through this FOIA do not serve any "commercial interest." The information requested relates to the role that EPA has played in the Pavillion Field investigation, and events since EPA decided to abandon the Draft Report. This information concerns the government's operations, and has no commercial value.

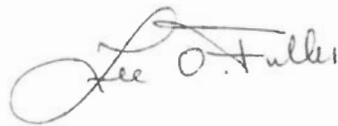
A fee waiver is clearly warranted under these circumstances. However, should EPA decide to deny the request for a fee waiver, please contact the undersigned before proceeding.

EPA has twenty (20) business days to respond to this FOIA request. If any part of this/these record(s) is not produced based on a claim of privilege or other exemption from disclosure, please prepare a privilege and/or exemption log describing, at a minimum: (i) the type of record withheld; (ii) the dates of creation of the record; (iii) the subject of the record; (iv) identity of the author and all recipients of the record; (v) the names of all people, entities and locations referenced in the record; and

(vi) a detailed description of the basis upon which EPA is withholding the record and which specific statutory and regulatory provisions support the withholding. To the extent any responsive documents are withheld based upon a claim of privilege or exemption, please produce redacted copies of all non-privileged or non-exempt material contained within such documents.

Finally, as suggested in a July 11, 2016 email from EPA Region 8 FOIA Officer Alan Engles to IPAA Senior Vice President C. Jeffrey Eshelman, IPAA is requesting a copy of the documents EPA has already assembled which are responsive to prior FOIA requests related to Pavillion Field.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lee O. Fuller". The signature is fluid and cursive, with a large loop at the beginning and a horizontal line extending to the right.

Lee O. Fuller

Executive Vice President

Attachment A
EPA Region 8 Personnel

1. Luke Chavez
2. Martin Hestmark
3. Johanna Miller
4. Richard Mylott
5. Gregory Oberley
6. Robert Parker
7. Ayn Schmit
8. Thomas Sitz
9. Nathan Wiser
10. Any EPA employee who has succeeded to the duties or responsibilities of any of the individuals named above.

Attachment B

Documents

1. EPA's draft 2011 *Investigation of Ground Water Contamination near Pavillion, Wyoming*
2. The Wyoming Department of Environmental Quality's draft 2015 *Pavillion, Wyoming Area Domestic water Wells Draft Final Report and Palatability Study* (December 14, 2015) ("DEQ's 2015 Draft Report")
3. Dominic C. DiGiulio and Robert B. Jackson, *Impact to Underground Sources of Drinking Water and Domestic Wells from Production Well Stimulation and Completion Practices in the Pavillion, Wyoming Field*, 50 *Environmental Science and Technology* 4524 (March 29, 2016)